



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 1, 2007

CBCA 804-RELO

In the Matter of WILLIAM K. RAIFORD

William K. Raiford, Chesapeake, VA, Claimant.

Marilyn Passori, Civilian Personnel Division, Naval Network Warfare Command, Department of the Navy, Norfolk, VA, appearing for Department of the Navy.

STEEL, Board Judge.

This claim concerns an employee's entitlement to reimbursement of a real estate commission incurred incident to a permanent change of station (PCS) move.

Background

Claimant, William K. Raiford, a civilian employee of the Department of Defense, was notified on November 21, 2005, of a PCS from Dahlgren, Virginia, to Chesapeake, Virginia, and he reported for duty at the new duty station on February 6, 2006. He sought reimbursement for the 7% real estate broker's commission he paid in connection with the sale of his home in Fredericksburg, Virginia, at his old duty station. The reviewing official determined that the usual and customary real estate commission in the area was 6%, not 7%, and only reimbursed that amount. Claimant is seeking to recover the 1% of sales price difference, or \$4199.

Discussion

_____ The Government may pay an employee changing his permanent duty station expenses incurred in the sale of a residence at his old duty station. However, the reimbursement for brokerage fees and other expenses may not exceed those customarily charged in the locality where the residence is located. As a civilian employee of the Department of Defense, claimant is subject to the Department's Joint Travel Regulations (JTR), specifically JTR C14002-A.1, which states:

1. Broker's Fees or Real Estate Commission. A broker's fee or real estate commission for services in selling the residence is reimbursable, but not in excess of rates generally charged for such services in the locality of the old PDS. No such fee or commission is reimbursable in connection with the purchase of a home at the new PDS.

Mr. Raiford originally listed his property with a realtor at a 6% of sales price commission. After eight months, because of a decline in the market and a lack of interested buyers, he switched agents within the real estate agency. At the new agent's suggestion and in order to expedite the sale, Mr. Raiford agreed to increase the commission by 1% to 7%. The house sold two months later, albeit at a steep reduction from the original asking price.

The agency's reviewing official, based her determination to only allow a 6% commission on two grounds. First, Mr. Raiford admits that he voluntarily increased the commission to 7% for the purpose of inducing selling agents to expedite the sale of his house. Second, the official reviewed ten claims that were processed for other employees who transferred from the same locality and determined that the usual and customary broker's fee charged was 6%, the same fee that was originally to have been charged to Mr. Raiford.

The JTR does not allow for reimbursement of a higher rate where the higher commission was needed to expedite a sale. *Raymond L. Hipsher*, B-214555 (Aug. 28, 1984). Mr. Hipsher's circumstances were nearly identical to the claimant's. In Mr. Hipsher's case, to which similar regulations applied, the Comptroller General held that the regulations "do not allow reimbursement for sales commissions above the general area rate, even where the higher commission rate was needed to expedite the sale." *See also Calvin T. Westmoreland*, B-196517 (Feb. 19, 1980).

In a more recent case, the General Services Board of Contract Appeals (GSBCA) found that, while numerous claimants were able to show that the prevailing rate in their locality was 7%, not 6%, and were thus entitled to an additional 1% of sales price over that awarded, the one claimant who decided to pay 8.5% so as to expedite the sale of his house was only entitled to the newly-determined prevailing rate of 7%. *Dan A. Berkebile*, GSBCA 14845-RELO, et al., 99-2 BCA ¶ 30,492.

Decision

The claim for reimbursement of an additional 1% sales price commission is denied.

Candida S. Steel
Board Judge